

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4602/MUM/2018  
Assessment Year: 2007-08**

Shri Hitendra Chunilal shah  
54, Gulalwadi, Kika Street  
Mumbai - 400 004

**PAN No. AADPS9581R**

Income Tax Officer  
Vs. Ward - 19(1)(5)  
Matru Mandir Building, 2<sup>nd</sup> Floor,  
Nana Chowk, Bhatia Hospital Lane,  
Grant Road (W)  
Mumbai - 400 007

**Appellant**

**Respondent**

Assessee by : Shri Nishit Gandhi (AR)  
Revenue by : Shri Bhoopathi (DR)

Last Date of Hearing : 16/07/2020  
Date of pronouncement : 17 /09/2020

**ORDER**

**PER N.K. PRADHAN, A.M.**

This is an appeal filed by the assessee. The relevant assessment year is 2007-08. The appeal is directed against the order passed by the Commissioner of Income Tax (Appeals)-6, Mumbai [in short 'CIT(A)'] and arises out of assessment completed u/s. 143(3) of the Income Tax Act. 1961 (the Act).

2. The grounds of appeal filed by the assessee read as under:

“1. On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Assessing Officer in reopening the case, without considering the provision of law.

2. On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of the Assessing Officer in making an addition u/s. 68 of the Income Tax Act, 1961 of Rs.5,00,000/- by treating non genuine unsecured loan, without considering the facts and circumstances of the case.

3. On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of the Assessing Officer in making an addition of Rs.60,000/- on account of interest paid on non-genuine unsecured loan, without considering the facts and circumstances of the case.”

3. Briefly stated, the facts of the case are that the assessee filed his return of income for the assessment year (A.Y.) 2007-08 on 31/10/2007 declaring total income of Rs.1,74,700/-. The assessee deals in ferrous and non-ferrous metals and iron & steel alloys. During the course of assessment proceedings, the Assessing Officer (AO), on the basis of information received from the Director General of Income tax (DGIT) (Inv.), Mumbai made an addition of Rs.5,00,000/- towards loan taken from M/s. Mohit International. Before making the said addition, the AO *vide* notice u/s. 142(1) asked the assessee to furnish details. As mentioned by the AO, the assessee filed ledger copy of loan stating loan confirmation and the amount of interest paid thereon. However, the AO was not convinced with the said reply and held that the assessee failed to discharge its onus u/s 68 of the Act. Then, referring to

various case laws, made an addition of Rs.5,00,000/-. Further, he disallowed interest of the above loan of Rs.60,000/-.

4. Aggrieved by the order of the AO, the assessee filing an appeal before the Ld.CIT(A). The Ld.CIT(A) confirmed the above addition made by the AO with following reasons:-

7.3 I have carefully considered the facts of the case, discussion of the AO in the assessment order, oral contention and written submission of the appellant and material available on record. It is the fact of the case that in the background of information that M/s. Mohit International was indulging into providing of unsecured loan entries to the people and as one of the beneficiary was the assessee, the case was reopened u/s 147 of the Act. In order to verify the bona fide of the said loan, the AO had provided opportunity to the assessee to establish the creditworthiness of the loan creditor. However, it has been noted therein that no valid supporting documents were produced to establish the creditworthiness and genuineness of the transactions. The AO at para 4.9 of the assessment order, has also mentioned that a notice u/s 133(6) of the Act was issued to the so-called creditors i.e. M/s. Mohit Internaitonal for confirmation of loan, however, the said loan of Rs.5,00,000/- was not confirmed by the loan creditor. It is further the fact that the assessee beyond submitting their own loan confirmation and copy of bank account, have not been able to furnish the bank account of M/s. Mohit International and therefore, the creditworthiness and genuineness of the transaction could not be proved in the facts and circumstances of the case. Accordingly, the contentions and submissions of the assessee that the transaction is genuine, is not found to be acceptable and is rejected. As regards the interest paid on such unsecured loan of Rs.60,000/- is concerned, when the loan itself has been held to be non-genuine and bogus, there cannot be any case of payment of interest thereon and therefore, it is held that the AO has rightly disallowed the same. Merely filing of TDS certificate which is at best an evidence which meets the eye, does not prove the actual payment of interest on such loan bona fide, which has not been proved by the assessee. In view of such facts and circumstances of the case and discussion hereinabove, the contentions and submissions of the assessee are not found to be acceptable and are accordingly rejected. Ground Nos. 3 and 4 are therefore, dismissed.”

5. Before us, the Ld. Counsel for the appellant submits that the assessee had filed before the AO, ledger copy of the loan along with loan confirmation and copy of bank account. Further, he had filed TDS certificate to prove interest payment on such loan. Thus, it is stated by the Ld. Counsel that the

primary onus was discharged by the assessee, whereas the AO made additions without any enquiry or verification. As the addition has been made on the basis of presumptions, it is the contention of the Ld. Counsel that the addition of disallowance of Rs.5,60,000/- be deleted.

On the other hand, the Ld. Departmental Representative (DR) submits that beyond filing loan confirmation and copy of bank account along with TDS certificate towards interest payment on the said loan, the assessee failed to prove the creditworthiness of the lender and genuineness of the transaction. Thus, it is stated that the order passed by the Ld. CIT(A) be affirmed.

6. We have heard the rival submission and perused the relevant materials available on record. The reasons for our decision are given below.

The first ground relates to reopening of assessment. In the instant case, the assessee filed its return of income for the impugned assessment year on 31/10/2007, declaring total income of Rs.1,74,700/-. The said return of income was processed u/s 143(1) of the Act. Thereafter, on the basis of information from the DGIT (Inv.) that the assessee had taken unsecured loan entries of Rs.5,00,000/- from M/s. Mohit International, the AO reopened the assessment. In the case of *ACIT vs Rajesh Jhaveri Stock Brokers (P.) Ltd.* (2007) 161 Taxman 316 (SC), the Hon'ble Supreme Court has held that as intimation u/s. 143(1)(a) is not 'assessment', there is no question of treating reassessment in such a case as based on change of opinion.

In view of the above position of law, the AO has, rightly reopened the assessment by issuing notice u/s. 148 of the Act. Thus, the first ground of appeal is dismissed.

6.1 Then, we turn to the second and third ground of appeal and discuss them together, as they address a common issue. It is well settled that after the assessee has adduced evidence to establish *prima-facie* (i) the identity of the creditor, (ii) the capacity of the creditor to advance money and (iii) the genuineness of the transaction, the onus shifts to the department. In the instant case as mentioned earlier, the assessee filed before the AO copy of ledger account along with loan confirmation and bank account. The AO could have made enquiries to verify the transactions contained therein. However, a perusal of the assessment order clearly indicates that the AO has not made even elementary enquiry to verify the claim of the assessee.

After the assessee has adduced evidence to establish *prima-facie* the above, the onus shifts to the department is amply clarified by the decision in *Shankar Ind v CIT* 114 ITR 689; *Prakash Textile v CIT* 121 ITR 890; *CIT v United* 187 ITR 596; *Rajshree v CIT* 256 ITR 331; *Ashokpal v CIT* 220 ITR 452; 454; *CIT v Metachem* 245 ITR 160; *CIT v Shree Gopal* 204 ITR 285.

In the instant case, the assessee has adduced evidence to establish *prima-facie* the loan of Rs.5,00,000/-. The onus shifted to the department. The AO, instead of making enquiry / verification has made the above additions.

In view of the above factual scenario and position of law, we delete the addition of Rs.5,60,000/- made by the AO. Thus, the second and third ground of appeal are allowed.

7. In the result, appeal filed by the assessee is allowed.

Order pronounced through notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-  
**(C.N.PRASAD)**  
**JUDICIAL MEMBER**

Mumbai:  
Dated: 17/09/2020  
THIRUMALESH Sr.PS

Sd/-  
**(N.K. PRADHAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,  
(Dy./Asstt. Registrar)  
**ITAT, Mumbai**